

1 overcrowding. The Intervening Defendant, California Bail Agents Association, seeks to qualify
 2 Retired Judge Quentin Kopp as an expert witness.

3 Judge Kopp spent eleven years as a Superior Court judge in San Mateo County and two
 4 and a half years as the San Mateo County Grand Jury Judge. Exp. Rep. ¶ 6. He is currently Of
 5 Counsel at the law firm of Furth, Salem, Mason and Li. *Id.* He received his law degree from
 6 Harvard Law School in 1952. Before taking the bench, Judge Kopp was a trial lawyer,
 7 representing clients in California state and federal courts. *Id.* Judge Kopp is an experienced jurist,
 8 but he is not an economic analyst or researcher. Because Judge Kopp’s economic opinions lack
 9 “a reliable basis in the knowledge and experience of his discipline,” Plaintiffs request that this
 10 Court strike the portions of his testimony that offer opinions on the costs of implementing
 11 alternatives to money bail but which have no data or discernible methodology to support the
 12 conclusions. *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. at 579, 591 (1993); *U.S. v.*
 13 *Sandoval-Mendoza*, 472 F.3d 645, 654 (9th Cir. 2006).

14 **A. Judge Kopp’s Economic Analysis Does Not Satisfy the *Daubert* Standard**
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16 The quality of expert opinion in this case must be of the highest caliber because the
 17 outcome will have far-reaching effects on all current and future criminal defendants in San
 18 Francisco County. An expert witness must have “scientific, technical, or other specialized
 19 knowledge that will help the trier of fact to understand the evidence or determine a fact in issue[.]
 20 Fed. R. Evid. 702(a). That expertise must produce “testimony . . . based on sufficient facts or data
 21 . . . [that is] the product of reliable principles and methods” which have been reliably applied. Fed.
 22 R. Evid. 702(b)–(d). Furthermore, such testimony is considered reliable only if the expert’s
 23 methods can be tested, have a low error rate, and the resulting theory has been subject to peer
 24 review and is generally accepted within the scientific community. *Daubert v. Merrill Dow*

1 *Pharmaceuticals*, 509 U.S. 579, 593–95 (1993); see *Kumho Tire Co. v. Carmichael*, 526 U.S. 137,
 2 147 (1999) (requiring similar vetting for non-scientific expert testimony).

3 It is “critically important” that the trial court ensures experts are qualified to give reliable
 4 opinions that will assist the trier of fact. *Jinro America v. Secure Investments Inc.*, 266 F.3d 993,
 5 1005 (9th Cir. 2001). Proper qualification of an expert is particularly important where the
 6 proffered expert is someone like a former judge, whose testimony “carries an aura of special
 7 reliability and trustworthiness.” *United States v. Gutierrez*, 995 F.2d 169, 172 (9th Cir. 1993).

8 Plaintiffs respectfully request that this Court exclude Judge Kopp’s testimony about the
 9 cost of alternatives to money bail as he does not support his economic analysis with evidence or
 10 explain a verifiable methodology that could produce his results. His economic projections about
 11 the costs of pretrial services implementation in San Francisco use undisclosed data, principles and
 12 methodology and thus risk confusing the trier of fact. *Daubert*, 509 U.S. at 595 (“the focus, of
 13 course, must be solely on principles and methodology, not on the conclusions they generate.”).

14 Judge Kopp’s unsupported statements about the cost of implementing alternatives to
 15 money bail include:

- 16 • It will manifestly be too expensive and onerous for California to implement a
 17 pretrial services program of the type which exists in D.C. or New Jersey. Exp. Rep.
 18 ¶ 19.
- 19 • [S]hifting more than 300,000 defendants from privately funded bail to taxpayer-
 20 funded pretrial release programs will strain California’s already underfunded court
 21 system.” Exp. Rep. ¶ 21 (internal citations to the record omitted);
- 22 • By most conservative estimates, alternative pretrial release conditions that end
 23 reliance on money bail will cost the state and counties (and taxpayers) an additional
 24 \$2,000,000,000 to \$4,000,000,000 each year. Exp. Rep. ¶ 26.

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 26 Because Judge Kopp offers no basis for his testimony, his economic analysis amounts to
 27 “[professional] judgment that does not provide an adequate basis for an opinion on an issue foreign
 28 to [his professional] practice,” which *Daubert* prohibits. *Nelson v. Matrixx Initiatives, Inc.*, No. C
 Plaintiffs’ Motion to Limit Kopp Testimony

1 09-02904 WHA, 2012 WL 3627399, at *12 (N.D. Cal. Aug. 21, 2012), *aff'd sub nom. Nelson v.*
2 *Matrixx Initiatives, Inc.*, 592 Fed. App'x 591 (9th Cir. 2015). Judge Kopp's expertise is limited
3 to judicial matters rather than economic analysis or calculation of costs to implement public policy
4 innovations. Judge Kopp offers no "reasoning or methodology that can be properly applied to the
5 facts in issue," and therefore his economic projections are misleading and prejudicial. *Daubert*,
6 509 U.S. at 592.

7 Judge Kopp's methodology appears to be no more than simple mathematics. He calculates
8 the cost of a pretrial services program by taking the cost of pretrial services in a different
9 jurisdiction and multiplying it by a factor that represents that jurisdiction's population in
10 comparison to that of California. For instance, he claims it would cost California roughly fifty-
11 eight times as much as D.C. to implement a pretrial program, because California's population is
12 fifty-eight times larger. Exp. Rep. ¶¶ 17–18. This calculation method cannot be considered "the
13 product of reliable principles and methods" required by Rule 702 or one that would be generally
14 accepted among economists. It assumes that pretrial services programs increase exponentially
15 with population without justifying that premise or addressing economies of scale or other cost-
16 saving factors. By simply multiplying data in an unverified manner and presenting as economic
17 analysis, Judge Kopp "unjustifiably extrapolate[s] from an accepted premise to an unfounded
18 conclusion." *General Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) (noting that in some cases a
19 trial court "may conclude that there is simply too great an analytical gap between the data and the
20 opinion proffered"). Judge Kopp's unexplained methods and unverifiable conclusions pose a high
21 risk of prejudicial effect because he is an accomplished judicial officer, and thus his opinions carry
22 an aura of reliability and trustworthiness. *See Gutierrez*, 995 F.2d at 172. Plaintiffs therefore
23 request that this Court exclude all portions of Judge Kopp's testimony that make economic

1 projections using no discernible economic methodology.

2 **II. Conclusion**

3 For the reasons above, Plaintiffs respectfully request the Court enter an Order excluding
4 all portions of Judge Kopp's testimony that purport to provide reliable economic analysis with no
5 citation to verifiable data, principles, or methodology.

6 Respectfully submitted,

7 /s/ Phil Telfeyan

8 Phil Telfeyan (California Bar No. 258270)

9 400 7th Street NW, Suite 602

10 Washington, D.C. 20004

11 (202) 505-2058

12 ptelfeyan@equaljusticeunderlaw.org

13 *Attorney for Plaintiffs*

14 **CERTIFICATE OF SERVICE**

15 I certify that on October 31, 2017, I electronically filed the foregoing document with the
16 Clerk of the Court using the CM/ECF system, which will send notice of such filing to all attorneys-
17 of-record in this case.

18 /s/ Phil Telfeyan

19 *Attorney for Plaintiffs*